

**MINUTES  
LIVESTOCK FACILITY SITING REVIEW BOARD  
TELECONFERENCE MEETING**

**November 16, 2007**

**Boardroom 106, 2811 Agriculture Drive, Madison, WI**

Chair Holte called the meeting to order at 11 a.m., and Price took the roll call. LFSRB members present were Lee Engelbrecht, Andy Johnson, Bob Selk, Bob Topel, and Fran Byerly. A quorum was present. Jerome Gaska joined the meeting at 11:17 a.m. DATCP staff present were Cheryl Daniels and Lori Price.

**Call to order**

Holte stated the meeting agenda was publicly noticed, as required, and then presented the agenda for approval. Topel moved to approve the agenda, and Johnson seconded the motion. The motion passed.

Holte presented the September 21, 2007, meeting minutes for approval. Johnson moved to approve the minutes as written, and Engelbrecht seconded the motion. The motion passed.

**Larson Acres, Inc. v. Town of Magnolia case, Docket #07-L-01—case status including possible motion to consolidate and upcoming briefing schedule; status of any stay on LFSRB order; and future board discussion with litigation attorney**

Daniels started this agenda item by refreshing the board on who filed appeals to the Rock County circuit court on the board's order in this case—one was filed by eight people within the two-mile radius of the facility and the other one was filed by the Town of Magnolia. Bob Hunter with DOJ will represent the board in these appeals. There was no closed session meeting between the board and Hunter at today's meeting because the court has not yet reviewed either appeal and there have been no requests to consolidate both appeals. Also, neither party filed a motion for a stay on the board's order to the county. However, Larson did file a motion to dismiss the appeals based on a procedural legal argument. The argument was that the motion for the board to reconsider the case was filed at the same time the appeals were filed, and the appeals should have been re-filed after the board made a decision on the motion for reconsideration. Larson claimed the 30-day deadline to file appeals after the board's decision on reconsideration has passed therefore causing the appeals to miss the filing deadline. Daniels commented that it is difficult to know if the court will accept this argument. Selk was in the opinion that the judge would probably deal with this through past case law and by asking who would be prejudiced by the motion to dismiss. Daniels stated that no schedule has been set to meet with Hunter, but she anticipated the board would most likely meet with him in January or February of 2008 at the earliest.

**Question of board meeting audio on website**

Daniels began this discussion by stating the board meetings were recorded in a format that allows the meeting audios to be placed on the board's webpage. If an individual cannot attend the

meetings in person, they can listen to the audios on the webpage. However, there was a concern with parts of the audio being used out of context. Board members expressed the same concern in that the audio could be edited to state something else and the quality of the audio is not always good. The board members decided to continue with the approved minutes as record of what took place at meetings. If the public would like to listen to the audio, they can request a copy through the department.

### **Formalizing input to board on policies and procedures**

Daniels reported that department staff requested the board's guidance on bringing policy issues before the board. Wisconsin Act 235 gives the board members the authority to consult with DATCP staff on specific issues that affect a specific case, but staff may have policy issues they would like to bring before the board in the process of working with the public on livestock siting. There were two suggestions as to how the department could bring issues before the board: 1) send a letter to the board requesting time on the next meeting agenda; or 2) the board could set aside time on each meeting agenda for discussion with department staff. Board members discussed this item and agreed to have a written request from staff explaining what the issue is about be sent through Holte and Daniels first so they can determine if the issue should go on the next meeting agenda. Also, staff should include a written report with the meeting materials that go to the board. Gaska asked if other groups would be afforded this same option. Holte responded that other groups have the same option if the information relates to the responsibilities the board has in its decision-making process and the board determines it is appropriate to its decision-making ability. Daniels added she will notify the board if more than one viewpoint will be given at a meeting.

### **Discussion of changes to board bylaws and appendix**

Daniels reported that after hearing the first case last summer, the board decided to make procedural changes to their bylaws. In brief, the changes were not accepting additional position statements from aggrieved parties unless the board requests additional statements; parties will have 5 days to shorten position statements longer than 10 pages; submission of amicus briefs follow the same rule as position statements; and parties can request oral argument at least 10 days before the meeting but the board decides whether to hear oral arguments. Johnson commented he would like to include under amicus briefs a statement to the fact that the board will decide through motion whether to accept the amicus brief into the record. Daniels responded she could request from the party submitting the amicus brief that they give a short explanation outlining why they should be able to submit an amicus brief and the issue(s) they want to address. Topel suggested that parties should be allowed to submit responses that correct matters of fact in position statements so the board doesn't receive incorrect information. On request for oral argument, the request should also state the reason for the request to present oral argument. Selk added the board could allow parties 10 days to respond to position statements with a maximum of 5 pages for the response. Daniels will make these changes to the bylaws and bring them back to the board for review at their next meeting.

**Board schedule including next scheduled meeting and schedule of 2008 meetings; and future agenda items**

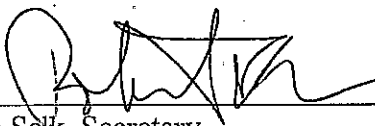
Daniels reported that no new cases will be brought before the board before the end of the year nor will the board know anything further on the Larson case appeals. She asked the board if they would like to meet by teleconference in December to review the bylaw changes or wait until the board is scheduled to meet with litigation council, perhaps as early as January. The board members decided to review the bylaws when they meet with Hunter.

Before adjournment, Daniels confirmed with the board members that they received the information on the request for an opinion on the livestock siting law sent to the attorney general and the subsequent response from the attorney general.

**Adjourn**

Topel moved to adjourn the meeting, and Byerly seconded the motion. The motion passed. The meeting ended at 12:02 p.m.

Respectfully submitted,

  
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Bob Selk, Secretary

18 Jan 08  
Date

Recorder: LP